

**REMARKS**

**PTO/SB/08 Form**

Applicants note that attached to the Office Action is a partially initialed PTO/SB/ 08 form, in which the Examiner has lined out the foreign language documents and indicated that the abstract could not be located in the Image File Wrapper file. On review, Applicants note that the English language abstract for each of the foreign language documents is in the Image File Wrapper as the first page in the document file for each of the foreign language documents. Moreover, even if the Examiner could not find the abstracts, Applicants submit that he still should have considered the foreign language documents based on the concise explanation of relevance as set forth in the first full paragraph on page 2 of the Information Disclosure Statement filed October 15, 2008. Accordingly, Applicants respectfully request that the Examiner consider the foreign language documents and return a fully initialed PTO/SB/08 form with the next communication from the PTO.

**Anticipation Rejection**

On page 2 of the Office Action, in paragraph 6, claims 1-3 and 6-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Nakae et al. (USPN 5,089,323).

**The Examiner's Position**

The Examiner position with respect to the broadly claimed invention appears to be basically the same as that set forth previously in regard to claims 1, 4, and 5, except that the Examiner now indicates that the refractive index of the xylene-soluble portion of the mixture of polymers (A) and (B) of the composition of Nakae et al. falls within the claimed range since the composition of Nakae et al. corresponds to the claimed composition (col. 3, lines 25-49). As to

new claims 9-13, the Examiner indicates that those claims are directed solely to the methods of determining various properties of either the high density polyethylene recited in claim 1, the polyolefin resin composition recited in claim 1, or the xylene-soluble portion of the mixture of polymers (A) and (B), and have therefore not been given any patentable weight since the method of determining a property of a material of an article is not germane to the patentability of the article itself.

With respect to the arguments presented in the last response, the Examiner indicates in paragraph 7 on page 4 of the Office Action that they have been fully considered but are not persuasive.

In particular, with respect to the argument that "case" in col. 3, lines 64-66 does not mean "container", the Examiner indicates that the Office Action does not state that the word "case" is being relied upon as a teaching of "container". Further, the Examiner indicates that Applicant admits on page 8 of the Amendment that Nakae et al. teach that the sheet "can be used in a package". The Examiner asserts that Nakae et al. teach a container "produced from a film or sheet" (language of present claim 1, line 1) because Nakae et al. teach a container that comprises a film or sheet (a film or sheet that is "used in" a container), as Applicant admits.

Also, the Examiner indicates that the refractive index of the xylene-soluble portion of the mixture of polymers (A) and (B) of the composition of Nakae et al. falls within the claimed range since the composition of Nakae et al. corresponds to the claimed composition (col. 3, lines 25-49), and that Nakae et al. teach that the sheet has a high density polyethylene layer that is disposed in the inner side of the container (col. 3, lines 25-49).

Finally, the Examiner indicates that Applicant alleges unexpected results, but the Examiner notes that there is no 35 U.S.C. 103 rejection of record.

### **Applicants' Response**

Applicants submit that the present invention is not anticipated by (or obvious over) Nakae, and request that the Examiner reconsider and withdraw this rejection in view of the following remarks.

With respect to the Examiner's reliance on the disclosure at col. 3, lines 64-66 for a teaching of "container", Applicants submit that one skilled in the art would understand that col. 3, lines 64-66 does not disclose that the oxygen absorbing sheet is a container. Rather, one would understand that it discloses that the oxygen absorbing sheet would stand out prominently from, e.g., the food content of packages. That is, the oxygen absorbing sheet does not form the package itself, but rather is present *inside* the package *together with, e.g., the food contents*. Such is the reason why Nakae specifically discloses that the oxygen absorbing sheet would "stand out prominently" from, e.g., the food content of packages, namely, *so that it would not be eaten by mistake* (see col. 2, lines 3-8, particularly col. 2, lines 7-8). Clearly, a user of a food-containing package would not eat the package itself by mistake, but could eat an oxygen absorbent packed together with the food inside the package by mistake (see, e.g., col. 1, lines 43-46).

As to the Examiner's indication that Applicant admits on page 8 of the Amendment that Nakae et al. teach that the sheet "can be used in a package", Applicants wish to point out that "in a package" means "inside a package", and does not mean that the sheet is part of the package itself (i.e., it is not the packaging material). With respect to the Examiner's assertion that Nakae et al. teach a container "produced from a film or sheet" (language of present claim 1, line 1) because Nakae et al. teach a container that comprises a film or sheet (a film or sheet that is "used in" a container) as Applicant allegedly admits, Applicant wishes to point out that "used in" a

container in this context means "used inside" a container, not used as a container or used to form a container.

As to the Examiner's indication that Nakae et al. teach that the sheet has a high density polyethylene layer that is disposed in the inner side of the container (col. 3, lines 25-49), Applicants submit that col. 3, lines 25-49 says nothing about being "disposed in the inner side of the container", and Applicants respectfully request that the Examiner identify the specific lines which set forth the quoted wording if he wishes to maintain his position in this regard.

In addition, Applicants submit that following comments for the Examiner's consideration.

(i) Nakae discloses a oxygen absorbing sheet which is a stretched film as described in Claim 1 of Nakae. The film includes small voids (microvoids), which are formed by stretching a film, and oxygen absorbent in the sheet is in contact with air through the microvoids. (Please refer to the disclosure at column 2, lines 27 to 32 of Nakae.)

A container of the present invention is a medical container and does not have voids, unlike Nakae. When microvoids are formed in a sheet, the sheet is not used for a medical container since a medical container ensures sanitary conditions. Through the microvoids, undesirable contamination is caused. In addition, a medical container of the present invention is excellent in transparency, whereas a sheet having microvoids is opaque.

(ii) Nakae discloses an oxygen absorbing sheet including an oxygen absorbent which includes an iron powder or a mixture of iron powder and an electrolyte. (Please refer to the disclosure at column 2, lines 39 to 42 of Nakae.) An iron powder has a dark hue and is not transparent, and a sheet including the iron powder is opaque. On the other hand, a medical container of the present invention is excellent in transparency. Such a characteristic is excellent as a medical container.

Finally, Applicants wish to point out that the unexpected results provided by the present invention and discussed in the last response are an additional reason why the present invention is not even obvious.

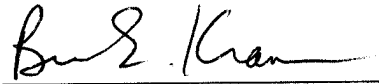
Thus, Applicants submit that the present invention is not anticipated by (or obvious over) Nakae, and withdrawal of this rejection is respectfully requested.

### **Conclusion**

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



Bruce E. Kramer  
Registration No. 33,725

SUGHRUE MION, PLLC  
Telephone: (202) 293-7060  
Facsimile: (202) 293-7860

WASHINGTON OFFICE

**23373**

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